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July 1, 1993

Ms. Madeleine Johnson
Opinion Committee
Texas Attorney General's Office
P. O. Box 12548
Austin, TX 78711-2548

Re: Request for Attorney General's Opinion

Dear Ms. Johnson:

I respectfully request that the Attorney General's Office of the State of Texas render to me its legal opinion concerning the following matter:

BRIEF STATEMENT OF CASE

Coke County has been asked by the Colorado River Municipal Water District (hereinafter referred to as "CRMWD") to prosecute persons using CRMWD's facilities at E.V. Spence Reservoir without a permit, based on written complaints filed by its employees. At issue is whether CRMWD employees can stop non-permitted persons, issue citations, and then file complaints against such persons in the Justice Court of Coke County, without complying with the certification requirements of the Texas Commission on Law Enforcement Officer Standards and Education.

FACTS

CRMWD was legislatively enacted under Article 8280-137 of the Texas Civil Statutes, by virtue of Article XVI., Section 59, of the Texas Constitution. CRMWD is also governed by the provisions of Chapter 51 of the Texas Water Code.

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RD-00575-DM
AAE-21108-93
FILE #
I.D.# 21108
RD-575

CRMWD owns and operates E.V. Spence Reservoir here in Coke County. Lake Spence contains approximately 14,950 surface acres of water, and has roughly 137 miles of shoreline. Pursuant to the above referenced statutes, CRMWD has adopted various rules and regulations for the use of their facilities at E.V. Spence Reservoir, and have also adopted criminal penalties for the violation of such rules and regulations. One such rule and regulation is an ordinance requiring all members of the public to purchase a permit from CRMWD, allowing access to CRMWD's lake facilities, and also requiring any member of the public to retain on their person such permit at all times. CRMWD has signs posted at a majority of the main entrances to the lake, notifying the public of its permit requirements.

Section 51.128 of the Texas Water Code provides that after CRMWD adopts and complies with the required publication of its rules and regulations, such rules and regulations shall be recognized by the courts as if they were penal ordinances of a city (that is as Class C Misdemeanors). Pursuant to Section 51.131, CRMWD set a penalty for the violation of its regulations at a fine of not more than \$200.

CRMWD does not employ or commission its own peace officers to enforce its regulations. Rather, CRMWD has hired individuals and given them the title of "Code Enforcement Officers" and delegated to them authority to enforce its published regulations. Code Enforcement Officers enforce CRMWD's permit requirement by arbitrarily stopping members of the general public who are upon CRMWD's Lake Spence facilities, at which time the officer displays an official looking "badge" and questions such person as to whether or not he or she possesses the required permit, and if such person does not hold the required permit, questions such person as to the person's name, address, employer, social security number, driver's license, and date of birth. If the person has no permit, the Code Enforcement Officer then issues the person a citation advising the person that criminal charges will be filed. (A copy of CRMWD's citation form is attached to this letter.) At that time the Code Enforcement Officer proceeds to file a complaint, together with the citation, with the Justice of the Peace in Coke County.

I am very concerned about the legality of these "stops" by CRMWD's Code Enforcement Officers, and, consequently, I am concerned that Coke County may expose itself to civil liability by prosecuting these cases. Therefore, this office has taken the position that CRMWD may not use its Code Enforcement Officers to enforce its regulations in this manner unless such officers are certified by the Texas Commission on Law Enforcement Officer Standards and Education under Article 4413(29aa), Vernon's Texas Civil Statutes. Although the above cited provisions of the Texas Civil Statutes and the Texas Water Code authorize CRMWD to establish rules and regulations governing the public's use of its facilities, the only provision found in either the Texas Constitution or the Texas Civil Statutes authorizing CRMWD to enforce its regulations is Section 51.132 of the Texas Water Code, which provides that CRMWD may employ and commission its own peace officers, sets forth the powers of such peace officers, and requires that such peace

officers be certified by the Texas Commission on Law Enforcement Officer Standards and Education.

ISSUE

Can CRMWD enforce its regulation requiring members of the general public to purchase and have in their possession permits for the use of its facilities at E.V. Spence Reservoir, by directing its Code Enforcement Officers who are not certified by the Texas Commission on Law Enforcement Officer Standards and Education to: (1) stop members of the public using such facilities, (2) question them concerning whether they possess the required permit, (3) further question persons without a permit to obtain the information set forth in the attached "citation", (4) issue to such person a copy of the "citation", and (5) file a criminal complaint against persons without permits in the Justice Court of Coke County.

Thank you very much for your assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris A. Wyatt", with a stylized flourish at the end.

Chris A. Wyatt

CAW:bgb:crmwd